Nos. 52 and 53.

IN THE

SUPREME COURT OF THE UNITED STATES.

OCTOBER TERM, 1941.

THE UNITED STATES OF AMERICA and INTERSTATE COMMERCE COMMISSION,

Appellants,

v.

N. E. ROSENBLUM TRUCK LINES, INC.

THE UNITED STATES OF AMERICA and INTERSTATE COMMERCE COMMISSION,

Appellants,

v.

J. B. MARGOLIES, an Individual, Doing Business as MANHATTAN TRUCK LINES.

Appeals from the District Court of the United States for the Eastern District of Missouri.

BRIEF FOR APPELLEES.

J. C. HOPEWELL,
M. E. ARONOFF,
GUS O. NATIONS,
Solicitors for Appellees.

St. Louis Law Printing Co., 415 North Eighth Street. CEntral 4477.

INDEX.

Cases Cited.

Statutes Cited.

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BRIEF FOR APPELLEES.

OPINIONS BELOW.

The opinion of the district court (R. 15-19) is reported at 36 F. Supp. 467. The opinion of the Interstate Commerce Commission will be found at 24 M. C. C. 1.

QUESTION PRESENTED.

Whether the transcript of proceedings before the Interstate Commerce Commission contains any evidence to support the finding of fact on which the commission's ruling is based.

STATUTE INVOLVED.

The Motor Carrier Act of 1935, which was amended by the Transportation Act of 1940; 54 Stat. 899; 49 U. S. C. A., Sec. 303, par. 15, and Sec. 309.

STATEMENT.

The statement made by appellants is argumentative in nature and to some extent inaccurate in our view of the facts and the record. Hence, the following statement:

The United States and the Interstate Commerce Commission have appealed in two cases named in the caption from final decrees of a specially constituted district court of three judges convened to hear the applications of appellees for orders setting aside separate rulings of the Interstate Commerce Commission.

Appellees had filed separate applications with the commission for permits or certificates to continue operations as contract or common carriers by motor vehicle of property in interstate commerce for hire. These applications were denied by a single opinion and order of the commission (R. 5). The applicants (appellees) filed in the district court at St. Louis separate actions to set aside and annul the commission's order. The two actions were considered by the three-judge court at a single hearing and determined in a single opinion. Judgment went to the applicants, setting aside the commission's order on the ground the evidence before the commission was insufficient

to support the factual finding upon which its order was based (R. 15-23, 36-39). The records in both cases are contained in the single printed transcript filed here by appellants.

The facts out of which the controversies arise are as follows:

The appellees are engaged in business as contract carriers[1] of freight by motor vehicle in interstate commerce and have been since 1934. The shippers for whom they carried freight prior to July 1, 1935,[2] were themselves common carriers.

Appellees' business consisted of moving for common carriers freight for the movement of which those carriers had no facilities or equipment available. Under a practice which had grown up before the adoption of the Motor Carrier Act of 1935, a common carrier, finding itself unable by its own equipment to move commodities consigned through it, would call appellees' offices and turn over to appellees freight to be moved under special contracts or agreements (R. 98). This service was performed by appellees for a number of common carriers, and appellees' equipment moved daily between St. Louis and Chicago (R. 55, 270-296).

Appellees' business was in no sense an appendage of that of any common carrier, but was entirely independent of any other enterprise. Appellees owned the trucks, maintained their equipment and garages, kept their own accounts, employed and paid the drivers, serviced, operated and garaged the trucks (R. 53, 212, 252) and accepted freight offered them by common carriers, as suited their convenience and the exigencies of their business. Appellees also carried the usual insurance on such operations

1 See 49 U. S. C. A. 303 (15).

2 See 49 U. S. C. A. 309 (a).

(R. 67) and when loss or damage occurred to merchandise in transit, appellees paid the damage when it was not covered by insurance (R. 67, 82-86, 270-296). All insurance premiums on trucks and commodities were paid by appellees as the operators of the equipment, the shippers or common carriers carrying blanket cargo insurance, but charging to appellees a proportionate amount of the premium to cover the insurance on merchandise which appellees carried for them[3] (R. 82-86). The insurance thus paid for by appellees covered losses greater than $100.00. All losses less than $100.00 were charged against appellees and paid by them as the operators of the equipment.[4]

None of the carriers who availed themselves of appellees' services leased appellees' trucks or ever had or acquired any interest in them or any right to use or control them, except as they might contract from day to day for

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[3] This is shown by testimony of witnesses and in statements issued by the common carriers on financial settlements with appellees. The items usually appear as "Pd. & Pl. Ins." (Property damage and public liability insurance) (R. 82-86, 270-296). The only exception to this otherwise uniform rule is that George Goode, president of Be-Mac Transportation Co., testified Rosenblum hauled three shipments for Be-Mac on which no charge for insurance was made to Rosenblum (R. 108). The record of settlement (R. 268) with Be-Mac, however, shows appellee paid for loss or damage to cargo; see statement No. 1519X, "Claim #10 $4.81," charged to appellee by Be-Mac.

[4] This is shown by these items in financial settlements between the common carriers and appellees: R. p. 268, Claim #10, $4.81; p. 276—Sears Cl. 188173—our 301 $5.50; p. 278—Sears-Roebuck $83.01; p. 279—Cl. 411—Sears 172442 $8.45; Cl. 424—Sears 172999 $14.77; p. 280—Claim 475—Renard Linoleum $13.00; Claim 490—James McCoy Co. $.75; p. 282—Sears Claim 189961—pro 21029—1/22/35 $.47; Sears Cl. 188175—pro 19807—2/29/34 $5.50; Sears Cl. 189439—pro 20853—1/17/35 $.35; Sears Cl. 189615—pro 20559—1/10/35 $1.00; Sears Cl. 189736—pro 17250—7/31/34 $6.05; Sears Cl. 190299—pro 21001—1/22/35 $.70; Sears Cl. 190264—pro 26196—2/7/35 $5.00; Sears Cl. 184916—Charge 11/6/34 in error Cr. $.45; p. 283—Damage—pro 22206—2/20/35 $.72; p. 285—Sears Cl. #192067—our #163 $25.09; Sears Cl. #193298—our 166 $37.37; H & R Furn. Co. Cl. our 197—pro 11089—8/9/34 $6.75; E. Main St. Garage—Taylorville—Dam. Pon. Sedan—Mrs. Opal Angle $11.00; Sears Cl. 194025—our #224—pro 41822, 4/1/35 $2.46; Sears Cl. 194292—our #229 $4.53. Sears Cl. 194957—our #255—pro 42402 $5.45; p. 287—Sears Cl. 197346—our 315 $2.92; Schulze Bak. Co. Cl.—our 330 $5.42; p. 288—Sears-Roebuck Co. Cl. 366 $2.89; Lammert Furn. Co. Cl. 344 $2.35; Sears-Roebuck Co. Cl. 347 $2.23; p. 290—Cl. 403 Sears $15.33; Cl. 421 Sears 172855 $1.07; p. 291—Claim declined (Cr.) $5.42; p. 294—Claim 380 $.29; Claim 581 $.33; p. 295—Claim 431 $.72; Claim 435 $1.70.

the carriage of their freight on appellees' constantly moving equipment. Sometimes shipments offered by common carriers and accepted by appellees amounted to truckload lots. Others were less than truckloads. In the latter case shipments of several common carriers were moved on one truck at one time (R. 75, 247).

Appellees issued no bills of lading, but operated solely under informal agreements on each shipment with those shippers (common carriers) who used their service.

After adoption of the Motor Carrier Act of 1935, 49 U. S. C. A. 301 et seq. (now Transportation Act of 1940), and within the time limited by that act, appellees, or their predecessors in interest, applied to the Commission for permits or certificates to continue in business as contract or common carriers under the "grandfather" clause of the act (49 U. S. C. A. 306, 309).

After hearings and taking of testimony before examiners appointed by the Commission, reports were filed in each case, holding that appellees are contract carriers and recommending issuance of permits (R. 87-93). At a subsequent hearing before other examiners, a contrary recommendation was made (R. 204, 205).

On consideration of the examiners' reports and recommendations, two of the three members of Division 5 of the Commission reached the conclusion that plaintiffs were not carriers on July 1, 1935, and denied permits to them. The ruling was based upon the following conclusion of fact (R. 10):

> "It is clear from the record, and we so conclude, that applicants' equipment prior to February, 1936, was operated solely under the direction and control of the common carriers and under the latter's responsibility to the general public and to the shippers. As to such operations, applicants do not qualify as

carriers by motor vehicle within the meaning of the act and are consequently not entitled to a certificate or a permit under the 'grandfather' clause of section 206 (a) or 209 (a) thereof."

This decision was concurred in by two commissioners, but Commissioner Lee dissented. The dissent followed the recommendations of the two examiners, contending plaintiffs were contract carriers within the meaning of the law and entitled to permits. Commissioner Lee's dissent is as follows (R. 10):

> "It was the intention of Congress that authority issued under the 'grandfather' clauses of sections 206 (a) and 209 (a) should go to the persons who actually conducted the motor-carrier operations and not to those who merely arranged for, or provided, transportation in vehicles operated under the direction, control and responsibility of others. See Dixie Ohio Exp. Co. Common Carrier Application, 17 M. C. C. 735, and Acme Fast Freight, Inc., Common Carrier Application, 8 M. C. C. 211.
>
> "These applicants have been continuously engaged in transportation of property by motor vehicle for hire since 1934, and, in my opinion, the evidence does not show that their vehicles were operated under the direction and control of the other carriers, who, during certain periods, turned over traffic to them for transportation. I would grant authority to applicants."

For relief from this action of a divided Commission, appellees brought these actions under Sections 205 (g) of the Transportation Act of 1940, 49 U. S. C. A. 305, and 24 and 209 of the Judicial Code (28 U. S. C. A. 41, 43, 44, 45, 46, 47 and 48).

At the trial in the district court appellees, as plaintiffs, introduced a transcript of the evidence which was before the Commission and from which the Commission drew the conclusion on which its order was based (pp. 23, 39).

The district court filed an opinion (R. 15-19), as well as conclusions of law (R. 21, 22, 38) and judgment, in which it held:

> "The conclusion seems inevitable that the common carriers did not have exclusive control of and dominion over the trucks of complainants while they were engaged in the transportation business, and that the conclusion of the Commission to that effect has no substantial basis in the evidence offered."

From the judgment giving effect to this ruling and setting aside the commission's orders in each case, this appeal is taken by the Government and the Commission.

SUMMARY OF ARGUMENT.

I. The only question before this court for decision is whether the district court erred in holding there was no substantial evidence before the Commission that appellees' trucks were operated under the direction and control of the common carriers.

II. There is no evidence in the record of the proceedings before the Commission to support the following finding and conclusion of the Commission:

> "It is clear from the record, and we so conclude, that applicants' equipment prior to February, 1936, was operated solely under the direction and control of the common carriers and under the latter's responsibility to the general public and to the shippers. As to such operations, applicants do not qualify as carriers by motor vehicle within the meaning of the act and are consequently not entitled to a certificate or a permit under the 'grandfather' clause of section 206 (a) thereof."

III. All of the evidence in the case supports and establishes as fact the following conclusion in the dissent of Commissioner Lee:

> "These applicants have been continuously engaged in transportation of property by motor vehicle for hire since 1934, and, in my opinion, the evidence does not show that their vehicles were operated under the direction and control of the other carriers, who, during certain periods, turned over traffic to them for transportation."

IV. Commissioner Lee of the Interstate Commerce Commission correctly stated the controlling law in his dissenting opinion, in which he said:

> "It was the intention of Congress that authority

issued under the 'grandfather' clauses of sections 206 (a) and 209 (a) should go to the persons who actually conducted the motor-carrier operations and not to those who merely arranged for, or provided, transportation in vehicles operated under the direction, control and responsibility of others. See Dixie Ohio Exp. Co. Common Carrier Application, 17 M. C. C. 735, and Acme Fast Freight, Inc., Common Carrier Application, 8 M. C. C. 211."

ARGUMENT.

I. The only question before this court for decision is whether the district court erred in holding there was no substantial evidence before the Commission that appellees' trucks were operated under the direction and control of the common carriers.

The Commission denied appellees' claims to permits as contract carriers because it found as an ultimate fact

> "that applicants' equipment prior to February, 1936, was operated solely under the direction and control of the common carriers and under the latter's responsibility to the general public and to the shippers" (R. 10).

Relying on this fact, the Commission reached the conclusion of law that the common carriers and not the truck owners were engaged in the interstate operation, and, consequently, the owners were not entitled to permit rights.

The district court held there was no substantial evidence before the Commission from which its factual conclusion could be drawn, and set aside the order based on that conclusion. Except for this appeal, the district court's order would have remanded the matter to the Commission for further consideration.

We believe the sole question here for determination is whether the district court erred in holding the evidence before the Commission does not support its finding and resulting order. Accordingly, we have thus stated the question we believe is before this court for determination:

> "Whether the transcript of proceedings before the Interstate Commerce Commission contains any evidence to support the finding of fact on which the Commission's ruling is based."

Appellants, however, think the question is broader. Apparently the appeal rests on the erroneous theory this court may exercise the function of the Commission and decide the larger question which only the Commission can decide. Appellants' brief states the issue here thus (p. 2):

> "Whether the truck operations in which appellees were separately engaged on July 1, 1935, were those of 'contract carriers by motor vehicle' as defined by the Motor Carrier Act of 1935, entitling them to permits from the Interstate Commerce Commission to operate as such carriers under the 'grandfather' proviso of Section 209 (a) of the Act."

Obviously, the latter statement involves questions of both law and fact. **It is the precise question presented to, and the entire issue decided by, the Commission.** It is not the question decided by the district court. Neither is it the question to be decided here. The judicial question is much narrower.

To answer the question posed and argued by appellants, this court must usurp the function of the Commission and exercise the discretion which the law has confided expressly and exclusively to the Commission. To do this the court must abandon the oft-stated rule that the judicial function in review of orders of the Commission is limited to the test of "statutory authority and the basic prerequisites of proof."[5]

To resolve the question proposed by appellants' brief, this court must first decide what were the "operations in which appellees were engaged on July 1, 1935." But such determination is in the exclusive province of the Commission. It requires an examination of evidentiary facts for the purpose of reaching a conclusion on the ultimate facts, in addition to applying the law to those facts.

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[5] Rochester Telephone Co. v. United States, 307 U. S. 125, 59 S. Ct. 754.

This no court may do, in light of the established rule. It must take the ultimate facts as the Commission has found them and apply to them only the test of "the basic prerequisites of proof." If the Commission's finding of fact meets this test it stands. If not it must be set aside. Here judicial authority ends.

The complaints filed in the district court were founded on the allegations the Commission's factual conclusion was unsupported by the evidence (R. 3, 31). The district court accepted this view and held (R. 19):

> "The conclusion seems inevitable that the common carriers did not have exclusive control of and dominion over the trucks of complainants while they were engaged in the transportation business, and that the conclusion of the Commission to that effect has no substantial basis in the evidence offered."

Was this error? This is the sole issue on this appeal.

II. **There is no evidence in the record of the proceedings before the Commission to support the following finding and conclusion of the Commission:**

> **"It is clear from the record, and we so conclude, that applicants' equipment prior to February, 1936, was operated solely under the direction and control of the common carriers and under the latter's responsibility to the general public and to the shippers. As to such operations, applicants do not qualify as carriers by motor vehicle within the meaning of the act and are consequently not entitled to a certificate or a permit under the 'grandfather' clause of section 206 (a) thereof."**

By these actions appellees invoked the "grandfather" provision of the Motor Carrier Act,[6] which provides, *inter alia:*

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[6] 49 U. S. C. A. 309 (a).

> "no person shall engage in the business of a contract carrier by motor vehicle in interstate or foreign commerce on any public highway * * * unless there is in force with respect to such carrier a permit issued by the Commission, authorizing such person to engage in such business; * * * if any such carrier or a predecessor in interest was in bona fide operation as a contract carrier by motor vehicle on July 1, 1935, * * * and has so operated since that time, the Commission shall issue such permit, without further proceedings * * *."

By the act[7] a contract carrier is declared to be

> "any person, not included under paragraph (14) of this section, who or which, under special and individual contracts or agreements, transports passengers or property in interstate or foreign commerce by motor vehicle for compensation."

It was and is the contention of appellees that on July 1, 1935, they were transporting property in interstate commerce by motor vehicle for compensation, and that Congress had them and others similarly engaged in mind in enacting the so-called "grandfather" clause, and intended by that clause to permit them to remain in the business in which they were engaged. The Commission denied their applications for permits because a majority of Division 5 found that they were not transporting property, but their trucks were being operated by those (common carriers) whose commodities were being hauled on the trucks, and, hence, the common carriers were doing the transporting. Thus the pivotal question in this case is, **"Who controlled the trucks of appellees?"** Two of the

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[7] 49 U. S. C. A. 303 (15). This section was modified by the Transportation Act of 1940, effective after the date of the Commission's order in these cases. The new section provides: "The term 'contract carrier by motor vehicle' means any person which, under individual contracts or agreements, engages in the transportation (other than transportation referred to in paragraph (14) and the exception therein) by motor vehicle of passengers or property in interstate or foreign commerce for compensation."

three commissioners in Division 5 found the common carriers had control. Commissioner Lee, who filed a dissenting opinion, the appellees and the district court all believe there is **no evidence** in the record that the common carriers had control of the trucks. The finding of the majority of Division 5 is quoted above. Commissioner Lee's dissent is as follows:

> "These applicants have been continuously engaged in transportation of property by motor vehicle for hire since 1934, and, in my opinion, the evidence does not show that their vehicles were operated under the direction and control of the other carriers, who, during certain periods, turned over traffic to them for transportation. I would grant authority to applicants."

There is not a word of evidence in the record which supports the conclusion the common carriers controlled appellees' equipment, but all the evidence which bears upon the question of control shows appellees were in control. And this is clearly shown also by the primary facts stated in the Commission's opinion, wherein, for example, it is said as to Rosenblum:

> "N. E. Rosenblum **commenced operations** with one tractor-trailer unit in 1934. A second unit was acquired in October, 1934, and in June, 1935, a third unit was leased and **put into service.** From the inception of **his operations** until February, 1936, **applicant hauled** only for 'reputable' truckers, between St. Louis and Chicago, for which he was paid a lump sum per trip on dock-to-dock movements. During this period **his operations** were performed principally for Transamerican Freight Lines, Inc., hereinafter called Transamerican, a common carrier operating a large number of units in this territory. Rosenblum testified that he also hauled for a number of other common carriers, most of whom are protestants herein, although representatives of certain of these protestants

testified that their records indicated that they had never used Rosenblum's services. It was not shown that the arrangements with the other carriers differed from those herein discussed.

"**In conducting the described operation,** applicant protected his equipment by carrying fire, theft, and collision insurance in his own name, while cargo, public-liability, property-damage, and like insurance for the protection of the general and shipping public were carried by Transamerican or other common carriers for which he was working. In some instances, **the cost of the latter types of insurance was charged to Rosenblum,** and on occasions small cargo-damage claims were charged to him by the carrier. While **drivers of the trucks were employees of Rosenblum,** Transamerican directed the routes generally to be followed by the drivers, required them to 'sign in' at registration stations along the route, and directed their departure and time of arrival at destination. Witness for Transamerican testified that the drivers were required to be acceptable to it, and in one instance when a driver was intoxicated it refused to permit him to transport one of its loads."

The foregoing statement, with two exceptions, is fully substantiated by the record. The exceptions are the statement that Rosenblum's operations "were performed principally for Transamerican Freight Lines, Inc."; and the further statement, "Transamerican directed the routes generally to be followed by the drivers, required them to 'sign in' at registration stations along the route, and directed their departure and time of arrival at destination." The record does not support these statements, but denies them. But, even if true, these things do not show or intimate the common carriers were controlling the trucks.

And the remaining portion of the language quoted shows not that the common carriers controlled the equip-

ment, but that these appellees controlled it. And when these statements are added to the undisputed facts that the equipment was driven, serviced, maintained, housed and wholly handled by plaintiffs' employees, it is conclusively established, without evidentiary dispute, that it was appellees and not the common carriers who controlled the equipment.

This language of the Commission, particularly the words in bold-face type, are an affirmative declaration of the Commission that it was the applicant who "commenced operations," and "from the inception of his operations" he "hauled for reputable truckers," for which "movements" he was paid a lump sum per trip; that "his operations" were performed for divers common carriers; that "in conducting the described operations, applicant protected his equipment" with insurance of certain kinds and paid for other insurance on the cargoes, and that applicant paid the damage claims not covered by insurance; that "drivers of the trucks were employees of Rosenblum."

It is difficult to understand how this statement of primary facts can be said to lead to the conclusion the common carriers controlled Rosenblum's equipment. To us it seems a bald *non sequitur*. We believe these facts in the opinion lead directly and inevitably to the conclusion Rosenblum was in control of the equipment. Since the Commission found (R. 8) Margolies' predecessor operated under similar conditions, this applies equally to him.

And appellants' brief in effect concedes this. It is true that on page 26 it undertakes to recite evidence to support the finding, but succeeds only in demonstrating the contrary. It is there said the finding that the common carriers operated and controlled appellees' equipment and performed the interstate operation is supported by evidence that

(a) the common carriers solicited the freight,

(b) and issued bills of lading, way bills and delivery receipts,

(c) in most cases they collected and accumulated the freight and loaded and sealed the trailers,[8]

(d) **the freight then moved in appellees' equipment to the common carriers' destination terminal,**

(e) and the common carriers delivered it to consignee at destination, and

(f) carried cargo, public liability and property damage and like insurance.[9]

We submit there is no word in this summary which supports the finding the contract carriers' equipment "was operated solely under the direction and control of the common carriers and under the latter's responsibility to the general public and to the shippers."

On the contrary, (d) does clearly show who was transporting "property in interstate • • • commerce by motor vehicle," and that such transportation was being performed by the contract carriers, alone. This summary of evidence relied on in appellants' brief in effect concedes the accuracy of the statement by the district court that

> "The conclusion seems inevitable that the common carriers did not have exclusive control of and dominion over the trucks of complainants while they were engaged in the transportation business, and that **the conclusion of the Commission to that effect has no substantial basis in the evidence offered**" (emphasis ours).

The argument of appellants is that the common carriers were entitled to "grandfather" rights as common carriers

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8 The record cited shows only that one common carrier (Transamerican) sealed the trailers when shipping in truckload lots. Many trucks carried part loads from several common carriers, all of whom could not have sealed such trailers (R. 75, 246, 247).

9 The record clearly shows, as we have already demonstrated, that while insurance policies were in the name of common carriers, all premiums were paid by the contract carriers, and all uninsured losses were paid by contract carriers.

because of the operation of the contract carrier trucks, and, hence, the contract carriers cannot be entitled to such rights. It proceeds on the theory that "transportation of property in interstate commerce by motor vehicle for compensation" is a vastly complex operation with many diverse factors and component parts. It is said that it consists principally of soliciting business, issuing bills of lading and collecting and delivering freight. And it is conceded, grudgingly, that the actual hauling of the freight from one state to the other is a small but, withal, relatively unimportant part of the operation. From this false premise, the argument proceeds that the actual hauling of the freight is only an incident in the operation, of which soliciting, issuing bills of lading and collecting and delivering freight is the principal part. Thus, it is said, the contract carriers were only "an integral part" of the common carriers' operation.

The principal difficulty with this view is it is contrary to common reason and flatly contradicts the language of the act, which makes the test the "**transporting** of freight in interstate commerce," and does not mention soliciting, collecting or delivering as any part of the operation.

In the operations dealt with in the record no common carrier ever **transported** an ounce of freight in interstate commerce. Every element of the operation mentioned in the statute was performed by the contract carriers. None was performed by the common carriers. The operations of contract carriers fully satisfy every requirement of the statutory definition. The operation may be stripped of every element contributed by the common carriers and it would still satisfy the statute. Strip it of the work of the contract carriers and there is nothing left that can be described by either of the words "transportation" or "interstate."

III. **All of the evidence in the case supports and establishes as fact the following conclusion in the dissent of Commissioner Lee:**

> **"These applicants have been continuously engaged in transportation of property by motor vehicle for hire since 1934, and, in my opinion, the evidence does not show that their vehicles were operated under the direction and control of the other carriers, who, during certain periods, turned over traffic to them for transportation."**

Appellants are unable or unwilling to recognize that in providing for both common carriers and contract carriers, Congress had in mind two distinctly different types of service. The statute[10] shows that common carriers are to carry "for the general public." As such they are privileged and required to carry for all who seek their service and pay for it. This has long been the responsibility of a common carrier, by rail, water, air or motor. Thus the common carrier has a "responsibility to the general public and its shippers."

But the statute[11] also creates another and distinctly different and entirely independent type of carrier, i. e., the contract carrier, who hauls not "for the general public," but "under special and individual contracts or agreements." Thus the contract carrier as such has no responsibility to the general public, since he has no relation or duty to the general public. He has a duty and responsibility only to those persons with whom he has "special and individual contracts or agreements."

Hence, the statement of appellants that the operations were under the responsibility of the common carriers "to the general public and the shippers" has no meaning. The

10 49 U. S. C. A. 303 (14).

11 U. S. C. A. 303 (15).

common carriers had a responsibility to the shippers from whom they solicited and obtained the freight. We had a similar and equal responsibility to them **as our shippers.** For protection against loss of freight of a value greater than $100.00, they required us to carry insurance in their name. Smaller losses we paid. Thus, whatever loss was incurred by negligent or inefficient operation of the equipment fell on us.

Can it be argued or contended with reason that they were operating the trucks, but for their negligence in so doing we were responsible? We were responsible for the loss because we were operating the equipment when the loss occurred. And every loss or damage incurred was paid either by us or by insurance for which we paid. Thus we carried and discharged the common-law obligation to the shippers which makes the carrier the insurer of safe arrival of goods.

The common carriers were merely shippers in their relation to appellees.

No carrier ever moved one of appellees' trucks in interstate commerce, or elsewhere. No common carrier had a lease or other right to the possession or control of one of appellees' trucks. No common carrier could demand the right to use appellees' trucks or to place a shipment aboard one of them. No common carrier had the right to say where, how, or when any truck should move, or what it should carry, or where it should go, or how fast it could travel. No common carrier could lay up a truck for repairs, fill it with gasoline, inflate its tires, or do any other thing about its movement or control. No common carrier paid any state a motor vehicle license to move one of appellees' trucks on state highways.

All of these things, and every other thing incident to the

operation and control of motor vehicles, were done by appellees alone, as the record clearly shows.

Appellees could accept or decline to accept the carrier's offer of freight for carriage.

It is said in the Commission's opinion, apparently to support the conclusion the common carrier controlled the equipment, that appellees' "drivers were required to be acceptable to" the common carrier, "and in one instance, when a driver was intoxicated, it refused to permit him to transport one of its loads."

But this does not indicate the common carrier was controlling the equipment. If it were, presumably, it would have replaced the drunken driver and used the truck to move the freight. But since it could not control the truck or the driver it refused to turn the freight over to appellees for carriage. This proves that the common carrier did not control the equipment, but only rejected its service when operation of it was unsatisfactory. Presumably, the truck and driver thus rejected proceeded to other duties under the control of its master, the contract carrier. The right thus exercised by the common carrier to refuse to turn over freight for carriage when service or equipment is unsatisfactory is not peculiar to a carrier. It is the right of any shipper. This incident emphasizes the common carrier's position as the shipper—not the carrier.

IV. **Commissioner Lee of the Interstate Commerce Commission correctly stated the controlling law in his dissenting opinion, in which he said** (R. 10):

> "It was the intention of Congress that authority issued under the 'grandfather' clauses of Sections 206 (a) and 209 (a) should go to the persons who actually conducted the motor-carrier operations and not to those who merely arranged for, or provided, transportation in vehicles operated under

> the direction, control and responsibility of others. See Dixie Ohio Exp. Co. Common Carrier Application, 17 M. C. C. 735, and Acme Fast Freight, Inc., Common Carrier Application, 8 M. C. C. 211."

We believe the sole question in this case for determination on this appeal is whether the evidence before the Commission sustains the factual conclusion on which its order is based, as shown under point I.

However, the argument of appellants discloses an erroneous view of the law which apparently is shared by two members of Division 5 of the Commission, and which has contributed to the Commission's error in reaching its conclusion in this case.

The view apparently entertained by the Commissioners who concurred in the ruling here under review, and reflected in appellants' brief, is that the statutory definition of a contract carrier is too broad—that Congress erred in failing to limit and confine more closely the "grandfather" rights of contract carriers, and that this supposed error of the lawmaker should be corrected by administrative interpretation.

The definition of a contract carrier, 49 U. S. C. A. 303 (15), is as follows:

> "The term 'contract carrier by motor vehicle' means any person, not included under paragraph (14) of this section, who or which, under special and individual contracts or agreements, and whether directly or by a lease or any other arrangement, transports passengers or property in interstate or foreign commerce by motor vehicle for compensation."

Appellants say that to this definition should be added the limitation that a contract carrier must not make "special and individual contracts or agreements" with or haul for common carriers, on penalty of being deprived of

his rights. They would modify the definition so as to make it read:

> "The term 'contract carrier by motor vehicle' means any person, not included under paragraph (14) of this section, who or which, under special and individual contracts or agreements, and whether directly or by a lease or any other arrangement, transports passengers or property in interstate or foreign commerce by motor vehicle for compensation, *so long as such transportation is not performed for shippers who are common carriers.*"

If appellants' contention about the controlling law (which we think is not now before the court) were sustained, the result would be in effect to amend the statute by the addition of the language set out in *Italics.*

This manifestly was not the intent of Congress, and is in conflict with the statute as Congress wrote it. It would limit the right to such an extent that many who were the objects of Congressional concern in writing the definition would be excluded from the industry, and this is what appellants seek to accomplish.

Appellants say that because of the interstate operations in which appellees were engaged, and which the common carriers arranged but did not perform, the common carriers are entitled to "grandfather" rights. Upon this hypothesis, which we believe is of doubtful validity, is erected the following entirely fallacious theory:

> "Appellees cannot claim to be contract carriers because their operations on July 1, 1935, were integral parts of common carrier systems."

Of this it may be said in this court's language, "the premise is not valid, nor does the conclusion follow."

Thus it is argued, however, the rights of the contract carriers are subordinate to and dependent on the rights

of their shippers. If the shipper claims the right the actual carrier is barred, according to this theory.

But the statute does not recognize any such limitation. And there is no reason for interpolating into the statute language which Congress did not use and which is clearly in contradiction of what Congress meant.

Appellants argue (page 18) that to allow permits to all persons who, like appellees, come within the literal definition of a contract carrier, would result in "complete chaos in the motor carrier industry." By this is obviously meant that many permits would result where appellants think there should be only a few. In other words, the policy decided on by Congress is a mistaken one. We cannot agree. Howbeit, Congress is the policy-making authority, and this argument should be made to Congress—not to the courts.

The test is, of course, the intention of Congress. And the judicial problem is the ascertainment of that intent. The congressional language here is so crystal clear it leaves no room for the office of interpretation.

Moreover, it should be kept in mind that this act was adopted in the midst of a disastrous depression marked by widespread unemployment arising out of business failures. In practically all legislation enacted in that period, Congress was struggling valiantly with the tragedy of unemployment and business stagnation. Daily its concern over business paralysis was apparent. In the great volume of new legislation of the time, the renewal of general employment and return to prosperity was a major objective. And that purpose stands out in the "grandfather" clause of this act. Congress was seeking here, and generally, for means to keep small business men in the enterprises which they had established in the battle with the scourge of de-

pression, and which they were conducting in defiance of adversity and economic discouragement.

And Congress clearly had that objective in mind in admonishing the Commission that men who were in the motor freight business must be permitted to remain. They were a part of the nation's remaining backlog of business ingenuity and perseverance that prevented complete freezing of business activity. And Congress meant to preserve them and their businesses.

Senator Burton K. Wheeler, sponsor of the act, and chairman of the Senate Committee in charge of the bill in the upper chamber, hailed its adoption by asserting,[12] "There will be plenty of service under the act; every common carrier truck or bus operator who was in business June 1 will receive an interstate certificate as a matter of right. Every contract truck operator who was in business July 1 will receive his interstate permit." What better authority on what Congress intended by the "grandfather" clause of the act than the sponsor of the act himself? Yet appellants argue that the act permits a great number of the small operators who were the objects of congressional concern to be driven out of the industry by a distortion of the act, in contradiction of the promise they would receive permits as a matter of right.

Commissioner Lee's dissents in this case and in other recent cases cited in the margin[13] truly reflect the intent of Congress and give to the statute the only rational interpretation possible. District Judge Fee[14], discussing the same point, has truly said:

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12 Mohundro's Notes on Motor Carrier Act of 1935, p. 556.

13 Los Angeles-Seattle M. Exp. Co., 24 M. C. C. 141; Glenn Cartage Co., 24 M. C. C. 285; O L D Forwarding Corp., 26 M. C. C. 481; J. Miller Co., 23 M. C. C. 421.

14 J. E. Johnson v. The United States et al., District Court of Oregon, Sept. 22, 1941.

"There is no clause of the act which provides that one who has been transporting goods in interstate commerce on and since June 1, 1935, must have dealt directly with the shippers and himself issued bills of lading. But the Commission were apparently influenced by their ideas that public policy required that no more than one 'grandfather' certificate should be issued for a single operation. **This determination seems to wipe out property rights of a small operation which Congress sought to preserve.**"

And the district court in this case, with equal sagacity, has unquestionably discerned the true legislative intent and purpose in saying in its opinion (14):

"The statute defines a contract carrier (49 U. S. C. A. 303):

" 'The term "contract carrier by motor vehicle" means any person not included under paragraph (14) of this section, who or which, under special and individual contracts or agreements, and whether directly or by a lease or any other arrangement, transports passengers or property in interstate or foreign commerce by motor vehicle for compensation.'

"The Act carries its own limitations. The section defining terms used excludes from the operation of the law, 'the casual, occasional or reciprocal transportation of passengers or property in interstate or foreign commerce for compensation by any person not engaged in transportation by motor vehicle as a regular occupation or business.' Sec. 303 (b). Consequently, one who occasionally furnishes equipment for interstate transportation does not come within the Act. It cannot be said that if permits are granted in these cases, they must be granted in every instance where on July 1, 1935, a person or corporation permitted his or its trucks to be used in interstate hauling. The person permitting his trucks to be used must have been engaged in the transportation business as a regular occupation or business. In these cases there

is no question but that complainants qualify in this regard.

"The defendants contend that the purpose of the 'grandfather clause' in the Motor Carrier Act was to allow only those carriers who had been dealing with **shippers directly** on July 1, 1935, to continue their operations without a determination of convenience and necessity. The Act itself refutes this argument, in that it recognizes that persons often act as brokers of motor transportation, and requires that such persons take out brokers' licenses. Although these persons deal directly with the shippers, they are not required to obtain common or contract carriers' licenses; on the contrary, the Act provides that the persons to whom the brokers turn over their business must have a carrier's license.

"Section 303 (18), U. S. C. A. 49, provides:

" 'The term "broker" means any person not included in the term "motor carrier" and not a bona fide employee or agent of any such carrier, who or which, as principal or agent, sells or offers for sale any transportation subject to this chapter, or negotiates for, or holds himself or itself out by solicitation, advertisement, or otherwise as one who sells, provides, furnishes, contracts, or arranges for such transportation.'

"Section 311 (b) provides for the issuance of licenses to brokers upon qualifying under the Act.

"In thus recognizing that common and contract carriers need not contract directly with the shipping public, but that such contracts may be made through third persons, such as brokers, Congress has shown a clear intention that licensing of carriers should not be affected by the fact that dealings were not had directly with shippers. Nothing in the statute indicates that a carrier must deal directly with the shipper in order to be entitled to a license under the Act.

"In United States v. Brooklyn Eastern Terminal,

249 U. S. 396, it was held that the Terminal was a carrier though not organized or held out as such, and though it had not filed tariffs nor undertaken to transport property for all who applied, but merely carried freight as agent for certain railroads with which it had made special contracts. See, also, United States v. California, 297 U. S. 175; Union Stock Yard and Transit Co. v. United States, 308 U. S. 213, l. c. 220. It was not the method of fixing charges, nor the parties with which complainants contracted, but what they did, that characterized their undertaking.

"The complainants transported freight in interstate commerce for compensation under agreements with common carriers. They actually engaged in the business of transportation. In so doing they provided the trucks and drivers, paid the license fees for using the highways, and assumed the responsibility for loss or damage to freight entrusted to them. This obligation they discharged both by carrying insurance and by payment of losses. The trucks were not used exclusively by any one common carrier, but by several. Even when called by one carrier, on some occasions the use of the trucks on the particular trip was not limited to the service of that carrier, but the freight of other carriers was transported in the same truck at the same time. These facts show that the control of the equipment was in the hands of complainants, and not in the hands of the common carriers.

"Complainants were, under the evidence, contract carriers on July 1, 1935, and have so operated since that time. Their status has not been changed by the subsequent extension of their business, as the statute does not restrict the right of the carrier to add to his or its equipment and facilities over the routes, between the termini or within the territory specified in the permit, as the development of the business and the demands of the public shall require. Sec. 309 (b).

"The statute says if they transport freight under special agreements 'directly or by a lease or any other

> arrangement' for compensation, they are contract carriers. This language is broad. Congress purposely so provided. It may be that the administrative process would be simpler had the statute been made to read otherwise. It might have been better to further limit the number of motor carriers, but this is not for the Court to say. Congress enacted the statute; it means what it says."

While we do not regard the interpretation to be placed on the statute as a question here for judgment, we believe this language of the district court is a full and complete answer to and refutation of the unsound doctrine advanced by appellants in contravention of the expressed will and purpose of Congress.

Appellants argue that since the re-enactment of the pertinent parts of the act in 1940 left them substantially intact, there is a presumption of congressional approval of the administrative rule. In this they refer to the rule adopted in Dixie-Ohio Exp. Co., 17 M. C. C. 735, that the carrier who actually operated the equipment on which the transportation was performed is entitled to the permit. With this rule we have no quarrel. We insist, in fact, that this is and should be the rule. Commissioner Lee's dissent in this case cites that rule as controlling. But there is not to be found in the Dixie-Ohio ruling any intimation of the revolutionary theory now advanced that the real operator who performs the interstate operation is only an appendage of the shipper or broker who arranged for the service, and whose "grandfather" rights are superior to the claim of the real carrier. The view now advanced by appellants is a departure from and in contradiction of the Dixie-Ohio rule that the person who transports the freight is invested with "grandfather" rights.

In this connection it is interesting and surprising to find that appellants' brief cites (pp. 18, 25) the actions of the

Commission in denying common carrier rights to Ray C. Kline[15] and J. T. O'Malley[16] in circumstances practically identical with those here revealed. Those rulings do not support appellants' argument here, but contradict it. They follow the principle of the Dixie-Ohio rule, while the present order does not.

In each of those cases the applicant claimed rights as a common carrier. In each the applicant had operated precisely as the common carriers operated in the cases now at bar, as shown by the Commission's findings. In each case the actual transportation of the freight was by the truck owners who operated exactly as did Rosenblum and Margolies. In each case the Commission concluded, correctly, we believe, that the truck owners, who actually carried the freight across the state line, were the carriers, and denied the applications of the common carriers.

Compare the Commission's statements of the facts in those cases, infra[17], with the facts in the present record.

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15 26 M. C. C. 741-746.

16 38 Fed. Supp. 1-4.

17 As to O'Malley (38 Fed. Supp., l. c. 2), the Commission found:

"That the plaintiff commenced operations in August, 1932, selling and providing transportation to shippers; that, except for the period from October 21, 1935, to October 11, 1937, he has had no line-haul motor equipment, but has used carriers to perform the transportation which he has contracted for; that his present operations do not differ substantially from those which he was conducting on June 1, 1935; that he has contracts with shippers to transport commodities for them at specified rates; that he also renders transportation service to shippers with whom he has no contracts; that for carrying out his undertakings he uses motor contract carriers operating between St. Paul and Fargo and between Minneapolis and Superior, which carriers, he claims, operate under his control; that these carriers maintain their own liability and property damage insurance, procure their licenses, employ their drivers, and operate their trucks in their own names; that the plaintiff has paid pilferage and damage claims to shippers, under an arrangement whereby the carriers are required to reimburse him; that these carriers bear the expense of any damage to their trucks and 'are considered' by plaintiff not to be his employees, but to be independent contractors; that they operate under oral agreements with him, which provide that they will move freight whenever he has any to move; that under these agreements between the plaintiff and the carriers, they are not required to handle freight unless they choose to do so, and can

In the O'Malley and Kline cases the evidence used as the basis of a conclusion the common carriers **were not in control** of the equipment is identical with that in the Rosenblum and Margolies cases, which the Commission finds leads to the conclusion that the common carriers **were in control** of the equipment. Thus identical primary facts are said in one case to prove one thing, and in another case to prove the exact reverse.

We believe the finding in this case is purely arbitrary and capricious and without any support in the record, because clearly contradictory of the evidentiary and primary facts.

Appellants, referring to the Kline case (Brief, p. 18), say:

> "In one case recently decided by the Commission the evidence disclosed that on the grandfather date the applicant for a common carrier certificate was employing the services and equipment of eighty-three owner-operators and that some of the owner-operators had applied for operating authority covering the same service as that claimed by the applicant. Kline, 26 M. C. C. 741. A rule which would require the Commission to treat every owner-operator hauling for other carriers on July 1, 1935, as being a carrier within the

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withdraw from the agreements at will; that the relationship between the plaintiff and the carriers that he uses to transport freight from the Twin Cities to Fargo and Superior is the same as his relationship with the rail and motor carriers which he uses to transport freight to Chicago, except that he claims that the former operate exclusively for him; that the plaintiff 'allegedly' has charge of the billing of freight and the dispatching of the trucks, and that he has directed the drivers when to go, when to return, and where to deliver, and has paid the cargo insurance."

As to Kline (26 M. C. C., l. c. 743), the Commission found:

"Applicant testified that he solicited traffic from shippers in his own name; that bills of lading were issued or signed in his name, and sometimes signed in the name of the driver only; that transportation charges were collected by him, or, when collected by the drivers, remitted to him; that transportation was conducted under State permits held by him; that the routes were sometimes designated by him, although they were the natural and usual routes to be used; and that he obtained 'trip transit' cargo insurance for each movement, and also carried property-damage and public-liability insurance."

meaning of the Act would result in such wholesale distribution of permits as to defeat the very purpose of federal regulation."

The frailty of this argument is made apparent by the Kline opinion, which reveals that the Commission in that case decided that those "owner-operators hauling for other carriers on July 1, 1935," are the true carriers within the meaning of the act. Apparently the Commission did not agree with appellants that this "would result in such wholesale distribution of permits as to defeat the very purpose of federal regulation."

Compare, also, Columbia Term. Co., 18 M. C. C. 662 et seq., in which the operation was on principle identical with those of Rosenblum and Margolies. The truck owner hauled for railroads who were common carriers. The Commission found the primary facts of that case, infra[18],

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18 The Commission there found (l. c. 665):

"* * * applicant owns and maintains the equipment, furnishing garage facilities, gasoline, oil, repairs and accessories required for operation. As of July 1, 1935, applicant had 212 trucks, 6 tractors and 10 semi-trailers in use in this department. In the contract service department applicant employs the driver of the vehicle. The vehicle is driven to shipper's place of business and remains on duty the entire day, excepting Sundays and legal holidays. The vehicle is kept in applicant's garage when it is not in use. The agreement provides that the vehicle shall be operated within a specified number of miles from the shipper's warehouse. Charges, based upon the number of miles the truck is operated daily, are collected by applicant each month. Applicant assumes responsibility for damage to property and personal-injury claims arising from or growing out of the use of the vehicle, and maintains insurance covering same. The testimony establishes that applicant's so-called contract service does not differ in principle from the service usually afforded by a contract carrier operating equipment and transporting specific commodities for particular shippers over irregular routes. The use of the vehicle in serving the shipper to the exclusion of all other shippers does not have the effect of converting the operation of applicant into one of private carriage by the shipper.

"At times applicant has canceled agreements for the use of equipment with driver where the shipper continuously overloaded the truck, thus indicating some further measure of retention of supervision and control. The application, as filed, indicates that applicant considers itself a contract carrier by motor vehicle with respect to the service of this department of its organization. Applicant concedes that where it furnishes both the driver and the truck the operation of the truck is under its direction and control and that its

to be identical with those here found, but to prove the truck owner and not the common carriers was in control of the equipment and consequently was entitled to the permit.

Thus, again, applying the rule that the actual operator of the equipment is the carrier entitled to rights, the Commission has found that primary facts identical with those shown by this record lead to a conclusion exactly opposite to that reached here.

The factual conclusion in the O'Malley, Kline and Columbia Terminals cases are the logical result of the evidentiary facts. And when those same evidentiary facts are used in this case to reach a conclusion exactly contrary, such conclusion is arbitrary and capricious and cannot rationally be held to be supported by the evidence relied on for that purpose.

Conclusion.

The rights of appellants cannot be made to depend on the rights or the conduct of others, nor upon any condition other than that prescribed by Congress.

The holding of the district court there is no evidence to support the factual conclusion on which the Commission's order is based is clearly right and should be affirmed.

J. C. HOPEWELL,
M. E. ARONOFF,
GUS O. NATIONS,
Solicitors for Appellees.

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status as to such operation is that of a contract carrier by motor vehicle.

"• • • The evidence indicates that on July 1, 1935, applicant was, and continuously since has been, engaged in transportation as a contract carrier by motor vehicle, in interstate or foreign commerce, of general commodities, limited to a service in which applicant leases trucks with drivers to shippers for the transportation of such shippers' property within the territory described in the findings herein."

SUPREME COURT OF THE UNITED STATES.

Nos. 52 and 53.—October Term, 1941.

The United States of America and Interstate Commerce Commission, Appellants, 52 *vs.* N. E. Rosenblum Truck Lines, Inc.	Appeals from the District Court of the United States for the Eastern District of Missouri.
The United States of America and Interstate Commerce Commission, Appellants, 53 *vs.* J. B. Margolies, an Individual Doing Business as Manhattan Truck Lines.	

[January 19, 1942.]

Mr. Justice Murphy delivered the opinion of the Court.

These are direct appeals by the United States and the Interstate Commerce Commission from final decrees of a specially constituted three-judge district court,[1] which sustained appellees' separate petitions to annul, set aside and enjoin an order of the Commission entered July 1, 1940, denying appellees' separate applications under the so-called "grandfather clause" of Section 209(a) of the Motor Carrier Act of 1935[2] (49 Stat. 543, 552, 49 U. S. C. sec. 309 (a)), for a permit authorizing operations as a contract carrier by motor vehicle.

The evidentiary facts are not seriously disputed. Prior to the critical date, July 1, 1935, and until February 1936, appellees and

[1] Convened pursuant to the Urgent Deficiencies Act of 1913 (38 Stat. 220, 28 U. S. C. secs. 47 and 47(a)) and Section 205(h) of the Motor Carrier Act of 1935, rearranged by the Transportation Act of 1940, 54 Stat. 899, as Section 205(g) of Part II of the Interstate Commerce Act.

[2] The Motor Carrier Act of 1935 is now designated as Part II of the Interstate Commerce Act. 54 Stat. 919.

their predecessors in interest[3] hauled only for common carriers by motor vehicle, and in each case principally for a single common carrier, between St. Louis and Chicago for which they were paid a lump sum on dock to dock movements. Appellees protected their equipment by carrying fire, theft and collision insurance in their own names. They also paid the operating and maintenance costs. Cargo, public-liability, property-damage, and similar types of insurance for the protection of the general and the shipping public were taken out by the common carriers and in some instances charged to the appellees. They occasionally paid small cargo damage claims not covered by insurance. The drivers of appellees' trucks were their employees. The specificity with which the common carriers directed the routes to be followed is in some doubt but the drivers were requested to "sign in" at certain registration stations enroute.

The greater portion of the traffic of the common carriers which appellees served was carried in the carriers' own vehicles. Appellees' equipment was secured on oral arrangements to handle overflow freight. The freight so handled was always solicited by the common carrier, accumulated at its terminal, loaded and unloaded by its employees, and moved from consignor to consignee on that carrier's way bills. The record is silent as to whether appellees' trucks bore the name of the common carrier on whose behalf they were operated.

After February 1936 appellees ceased hauling for common carriers by motor vehicle and began hauling for individual shippers in their own right.

The Commission found that appellees' equipment prior to February 1936 "was operated solely under the direction and control of the common carriers and under the latter's responsibility to the general public and the shippers" and concluded that "as to such operations applicants (appellees) do not qualify as carriers by motor vehicle within the meaning of the Act and are consequently not entitled to a certificate or a permit under the 'grandfather' clause of Section 206(a) or 209(a) thereof."[4]

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[3] In both of these cases it was the appellee's predecessor in interest who was operating on July 1, 1935. The predecessor of appellee in No. 52 was Rosenblum the individual, and the predecessor of appellee in No. 53 was an individual, Baulos.

[4] 24 M. C. C. 121.

The court below set aside the Commission's order, concluding that appellees were in "bona fide operation as (a) contract carrier(s) in interstate commerce on July 1, 1935" and "in so operating assumed control, management and responsibility for the hauling of cargo" and that "there is no substantial evidence in the record to support the order entered".[5]

The point of divergence between the Commission and the court below seems to have been whether the evidentiary facts supported the Commission's ultimate conclusion that appellees operated solely under the control of the common carriers. Because of our views as to the proper construction of the Act, we need not determine whether substantial evidence supports that conclusion of the Commission. In any event the evidence clearly shows that on the critical date, and from then until February 1936, appellees helped the common carriers move their overflow freight and, as to each job, were an integral part of a single common carrier service offered to the public by the common carrier for whom they hauled.

The question here, as in any problem of statutory construction, is the intention of the enacting body. Congress has set that forth for us broadly in the declaration of policy[6]—in essence it is the regulation of transportation by motor carriers in the public interest so as to achieve adequate, efficient and economical service. To implement that policy Congress forbade common carriers by motor vehicle to operate in interstate commerce without securing a certificate of public convenience and necessity from the Commission,[7] and required contract carriers to secure a permit from that body.[8] Those carriers engaged in either of such operations on the respective critical dates and continuously thereafter were to be given the requisite certificate or permit as of right under the "grandfather" provisos of Sections 206(a) and 209(a). We think it clear that Congress did not intend to grant multiple "grandfather" rights on the basis of a single transportation service. Presumably the common carriers which appellees served were entitled to common carrier "grandfather" rights over the entire line. It was the common carriers who offered the complete transportation service to the general public and the shipper. To hold that appellees, who performed part of that complete transportation service for those common carriers under

[5] 36 F. Supp. 467.

[6] Section 202(a), 49 U. S. C. sec. 302(a).

[7] Section 206(a), 49 U. S. C. sec. 306(a).

[8] Section 209(a), 49 U. S. C. sec. 309(a).

agreements with them, acquired contract carrier "grandfather" rights over the same line entitling them also to serve the public is to ascribe to Congress an intent incompatible with its purpose of regulation. The result would be to create in this case two services offering transportation to the public when there had been only one on the "grandfather" date, without allowing the Commission to determine if the additional service was in the public interest. And, instances can readily be imagined where a single common carrier might utilize the services of several operators such as appellees. Automatically to grant contract carrier rights to such operators might result in such a wholesale distribution of permits as would defeat the very purpose of federal regulation.

Also indicative of the Congressional intent not to confer contract carrier "grandfather" rights on operators, such as appellees, who, on the critical date, were not serving the public directly but were instruments performing part of a common carrier service, is the fact that there would seem to be no reason to apply to them the regulatory provisions of the Act generally applicable to contract carriers, such as the requirement that they should secure a permit only after a showing that their operations are "consistent with the public interest" (Section 209(b)), or that they should file schedules of their minimum rates (Section 218(a)), or that the Commission should prescribe the minimum rates (Section 218(b)). The Act clearly contemplates that contract and common carriers will offer competing types of service for Section 210 prohibits any person from simultaneously holding a certificate and a permit for the same route or territory unless the Commission finds that such is in the public interest, and Section 218(b) enjoins the Commission, in prescribing minimum rates for contract carriers, to "give no advantage or preference to any such carrier in competition with any common carrier by motor vehicle subject to this part". The declaration of policy in Section 202(a) which stresses the avoidance of destructive and unfair competition is referred to in the sections dealing with contract carriers.[9]

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[9] Section 209(b), 49 U. S. C. sec. 309(b). Section 218(b), 49 U. S. C. sec. 318(b).

The Commission has taken the position that while there may be destructive or unfair competition with common carriers when truck operators contract to do work in connection with transportation for common carriers which serve shippers directly, "it is not the truck operator who carries it on. Rather it is the carrier for whom he works, . . ." Scott Bros. Inc., 4 M. C. C. 551, 559.

Appellees' contention that their activities on the critical date fall within the literal language of the definition of "contract carrier" in force on the date of the order[10] and that they are therefore entitled to contract carrier "grandfather" rights is without merit. A holding that the activities of appellees prior to February 1936 were those of contract carriers would not accord with the intent of Congress. Where the plain meaning of words used in a statute produces an unreasonable result, "plainly at variance with the policy of the legislation as a whole", we may follow the purpose of the statute rather than the literal words. *United States* v. *American Trucking Associations*, 310 U. S. 534, 543, and cases cited. We conclude that the Commission rightly determined that appellees were not contract carriers within the meaning of the Act prior to February 1936.

Appellees make no contention that they were common carriers during the period in question and we are clear that they were not, for the Congressional intent to avoid multiple "grandfather" rights on the basis of a single transportation service is equally applicable to prevent appellees from being considered either as contract or as common carriers within the meaning of the Act. The reasonableness of this interpretation of the Act is apparent. Since appellees' operations, namely, serving the common carriers, on the critical date did not make them "carriers" within the meaning of the Act, and thus subject to regulation under it, it follows that they are free to engage in such operations without securing the authorization of the Commission.[11] But those operations cannot be the basis for appellees' automatically securing permits to serve the public in their own right, a service which they were not performing on the "grandfather" date.

The fact that carriers within the meaning of the Act need not deal directly with the public but may act through brokers[12] in no wise affects our conclusion. As we have seen, Congress did not in-

[10] Sec. 203(a) (15). The term "contract carrier by motor vehicle" means any person, not included under paragraph (14) of this section, who or which, under special and individual contracts or agreements, and whether directly or by a lease or any other arrangement, transports passengers or property in interstate or foreign commerce by motor vehicle for compensation. (The Transportation Act of 1940, 54 Stat. 899, amended this definition.)

[11] The Commission has so held. Dixon, 21 M. C. C. 617; Smythe, 22 M. C. C. 726.

[12] Section 203(18), 49 U. S. C. sec. 303(18), defines "broker" substantially as one who sells or offers for sale any transportation. Section 211(a), 49 U. S. C. sec. 311(a), requires that brokers be licensed and that the carriers they employ have either a certificate or a permit issued under the Act.

tend to confer multiple "grandfather" rights on the basis of a single transportation service to the public. That difficulty arises only when an operator undertakes to serve a carrier who is serving the public. It is not present when a carrier deals through a broker.

Reversed.

Mr Justice ROBERTS took no part in the consideration or decision of these cases.

A true copy.

Test:

Clerk, Supreme Court, U. S.